

In the Matter of Merchant Mariner's Document No. Z-224338-D6
Issued to: RICHARD HOY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

557

RICHARD HOYT

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46, Code of Federal Regulations Sec. 137.11-1.

On 11 December 1951, an Examiner of the United States Coast Guard at New York City suspended Merchant Mariner's Document No. Z-224338-D6 issued to Richard Hoyt upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as fireman-watertender on board the American SS NORTH LIGHT under authority of the document above described, on or about 2 July, 1951, while said vessel was in the port of Norfolk Virginia he failed to appear as directed in a subpoena dated 29 June 1951 and duly served and issued by Lt. J. W. McCurdy, USCG. Investigating Officer at Norfolk, Virginia.

At the hearing: Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and Appellant made their opening statements and the Investigating Officer introduced in evidence a certified copy of the subpoena which had been served upon Appellant.

At the conclusion of the hearing, the Examiner announced his findings and concluded that the charge had been proved by plea and entered the order suspending Appellant's Merchant Mariner's Document No. Z-224338-D6 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority for a period of six months; the first five months are for violation of the probationary order entered 28 February, 1951, and the sixth month is for the offense in the instant case.

This appeal is a plea for clemency stating that Appellant is a married man and must go back to work in order to pay his bills; and that he is not able to find any employment other than as a seaman.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 2 July, 1951, Appellant was serving as fireman-watertender on board the American SS NORTH LIGHT and acting under authority of his Merchant Mariner's Document No. Z-224338-D6 while the ship was at Norfolk, Virginia.

At about 0930 on this date, Appellant was served aboard the NORTH LIGHT with a subpoena issued by Lt. J. W. McCurdy, USCG. This subpoena orderd Appellant to appear as a witness at 1400 on 2 July, 1951, Navy Landing Building, Foot of West York Street, Norfolk, Virginia, in the proceeding instituted by the Coast Guard against Merchant Mariner's Document No. Z-431838 issued to Vincent J. Baynes, Z-431838.

Appellant did not appear at the designated place at 1400 on 2 July, 1951, or at any time thereafter on this date. He made no attempt to contact Lt. McCurdy or anyone else to explain his absence.

Appellant's prior disciplinary record consists of four probationary suspensions, two of which were for failure to join in 1945 and one for the same offense in 1949.

OPINION

Appellant's only explanation for his failure to appear in compliance with the subpoena was that he did not pay any attention to it, and forgot to look at the date and time even though he had the subpoena in his pocket. The Examiner rejected this explanation as being unsatisfactory. I am in accord with this and other views expressed by the Examiner. The Coast Guard is required to take disciplinary action in cases where such course seems merited; and when its processes are issued by authorized officers and completely ignored or flaunted by the addresses thereof appropriate action is required in those cases also.

Congress has said, "Attendance of witnesses . . . shall be compelled by a similar process as in the United States District Courts," (46 U.S.C. 239(e)). The process in this case conformed to the practice in the United States District Court, and perhaps, Appellant was fortunate that the Examiner did not cite him for contempt before the Federal Court where, upon conviction, a fine or imprisonment might have been imposed.

The effectiveness of the proceedings authorized by 46 U.S.C. 239 (R.S. 4450) as amended will be seriously impaired if recipients of subpoenas have a right of election respecting their appearance or nonappearance in response thereto.

As a matter of record of which I may take official notice, this Appellant was subpoenaed to testify respecting charges against one Baynes. Appellant had originally complained to the Master of the vessel NORTH LIGHT about Baynes' threatening conduct aboard ship. The charges against

Baynes were dismissed because of insufficient evidence. Thus, if Appellant's original complaints were proper, he should have supported them; if they were improper, he has put the Government to unnecessary expense, and a shipmate to some unnecessary annoyance, if not expense.

It is a responsibility of the Coast Guard to take remedial action against the certificates of American merchant mariners when the facts warrant such action. There is a corresponding duty upon merchant mariners to testify when their testimony will determine the merits of charges filed against other mariners. The obligation to testify is as great when the testimony is for as well as when it is against, such other mariners. It is as important to justify a person's conduct as it is to convict him of misconduct. But when an original complainant fails to appear to support charges against another seaman, there is a double offense; first, of causing unwarranted trouble which involves a person who may be innocent; and, second, disobedience of an order to appear.

Hence, this action against Appellant's document is readily justified as a remedial measure to insure that seamen who are subpoenaed to testify as witnesses in cases involving other seamen will not be permitted to interfere with routine discipline by refusing or failing to testify in such cases either for or against their shipmates who have been charged with disciplinary infractions aboard ship. The opinion of United States Attorney General Knox supports this view, 24 Op. Atty. Gen. 136 (1902). It is my opinion that in spite of its age, and the intervening amendment to the law which it discusses, the reasoning is still very sound; and I adopt it.

Appellant's indifference to the subpoena which was issued by competent authority and his failure to communicate with either the Investigating Officer or the Examiner in order to give a reasonable excuse for noncompliance with the subpoena, do not incline me to treat leniently his course of conduct.

I hold, as a matter of law, that any person who has been served with a subpoena, issued by duly authorized Coast Guard personnel, to attend and testify at a hearing conducted under 46 U.S.C. 239, and who fails to appear (without reasonable cause, stated at an opportune time) is guilty of misconduct.

CONCLUSION

In view of Appellant's past record, the Order imposed is not excessive, and it will be sustained.

ORDER

The Order of the Examiner dated 11 December, 1951, should be, and it is, **AFFIRMED**.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 9th day of May, 1952.